

1 AN ACT relating to coal severance tax.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 143.010 is amended to read as follows:

4 As used in this chapter:

- 5 (1) "Department" means the Department of Revenue;
- 6 (2) "Coal" means and includes any material composed predominantly of hydrocarbons  
7 in a solid state;
- 8 (3) "Severed," "severing," or "severance" means the physical removal of coal from the  
9 earth;
- 10 (4) "Ton" means a short ton of 2,000 pounds. The number of tons shall be determined  
11 at the first point at which the coal is weighed;
- 12 (5) (a) "Taxpayer" means and includes any individual, partnership, joint venture,  
13 association, or corporation engaged in severing and/or processing coal in this  
14 state. In instances where contracts, either oral or written, are entered into by  
15 which persons, organizations, or businesses are engaged to mine or process  
16 the coal but do not obtain title to or do not have an economic interest therein,  
17 the party who owns the coal or has an economic interest shall be the taxpayer.
- 18 (b) For purposes of this chapter, a taxpayer possesses an economic interest in coal  
19 where the taxpayer has acquired by investment any interest in coal and  
20 secures, by any form of legal relationship, income derived from the severance  
21 or processing of coal, to which he must look for a return of his capital. A party  
22 who has no capital investment in the coal or who only receives an arm's length  
23 royalty shall not be considered as having an economic interest;
- 24 (6) "Gross value" is defined as follows:
- 25 (a) For coal severed and/or processed and sold during a reporting period, gross  
26 value shall be the amount received or receivable by the taxpayer;
- 27 (b) For coal severed and/or processed, but not sold during a reporting period,

1 gross value shall be determined as follows:

2 1. If the coal is to be sold under the terms of an existing contract, the  
3 contract price shall be used in computing gross value; and

4 2. If there is no existing contract, the fair market value for that grade and  
5 quality of coal shall be used in computing gross value;

6 (c) In a transaction involving related parties, gross value shall be the amount  
7 received or receivable from the first noncontrolled sale by the related parties.  
8 If coal is sold to a related party for consumption, gross value shall not be less  
9 than the fair market value for coal of similar grade and quality;

10 (d) In the absence of a sale, gross value shall be the fair market value for coal of  
11 similar grade and quality;

12 (e) If severed coal is purchased for the purpose of processing and resale, the gross  
13 value shall be the amount received or receivable during the reporting period  
14 reduced by the amount paid or payable to the registered taxpayer actually  
15 severing the coal;

16 (f) If severed coal is purchased for the purpose of processing and consumption,  
17 the gross value shall be the fair market value of processed coal of similar  
18 grade and quality reduced by the amount paid or payable to the registered  
19 taxpayer actually severing the coal;

20 (g) In all instances, the gross value shall not be reduced by any taxes, including  
21 the tax levied by KRS 143.020, royalties, sales commissions, or any other  
22 expense; and

23 (h) In all instances, transportation expense incurred in transporting coal shall not  
24 be deducted from gross value~~[considered as gross income from the property]~~;

25 (7) "Reporting period" means the period for which each taxpayer shall compute his tax  
26 liability and remit the tax due to the department. The reporting period shall be  
27 monthly. However, the department may, under certain conditions, authorize a

- 1 quarterly reporting period;
- 2 (8) "Processing" includes cleaning, breaking, sizing, dust allaying, treating to prevent  
3 freezing, or loading or unloading for any purpose. "Processing" shall not include:
- 4 (a) Acts performed by a final consumer who is not a related party to the person  
5 who severed and/or processed the coal if such acts are performed only at the  
6 site where the coal is consumed for purposes of generating electricity;
- 7 (b) The act of unloading or loading for shipment coal that has not been severed,  
8 cleaned, broken, sized, or otherwise treated in Kentucky; or
- 9 (c) The use of electromagnetic energy on coal to reduce moisture, ash, sulfur, or  
10 mercury in the coal;
- 11 (9) "Related party" means two (2) or more persons, organizations, or businesses owned  
12 or controlled directly or indirectly by the same interest. Control shall exist if a  
13 contract or lease, either written or oral, is entered into whereby one (1) party  
14 mines or processes coal owned or held by another party and the owner or  
15 lessor participates in the mining, processing, or marketing of the coal or  
16 receives any value other than an arm's length passive royalty interest. In the  
17 case of related parties, the department may apportion or allocate the receipts  
18 between or among the persons, organizations, or businesses if it determines  
19 that the apportionment or allocation is necessary in order to more clearly  
20 reflect gross value;
- 21 (10) (a) "Transportation expense" means:
- 22 1. The amount paid by a taxpayer to a third party for transporting coal from  
23 the mine mouth or pit to a processing plant, tipple, or loading dock; and
- 24 2. The expense incurred by a taxpayer using his own facilities in  
25 transporting coal from the mine mouth or pit to a processing plant,  
26 tipple, or loading dock.
- 27 (b) "Transportation expense" shall not include:

- 1           1. The cost of acquisition, improvements, and maintenance of real  
2           property;
- 3           2. The cost of acquisition and operating expenses of mining and nonmining  
4           loading or unloading facilities; or
- 5           3. The cost of acquisition and operating expenses of equipment used to  
6           load or unload the coal at the mine, processing facility, and mining and  
7           nonmining loading facility;
- 8 (11) "Registered taxpayer" means a taxpayer who holds a valid coal tax certificate of  
9           registration required under KRS 143.030(1) and the certificate of registration was  
10          valid for the period in which his coal was sold;
- 11 (12) "Above-drainage" means coal in a coal bed that outcrops at the surface within a  
12          mine permit area and that is accessed at the outcrop location;
- 13 (13) "Below-drainage" means coal in a coal bed that does not outcrop at the surface  
14          within a mine permit area and that is accessed by mine slopes or other openings that  
15          penetrate the coal a minimum of thirty (30) feet below the surface drainage level;  
16          and
- 17 (14) "Mining ratio" means the amount of bank cubic yards of surface material that must  
18          be removed before a ton of coal can be mined.
- 19          ➔Section 2. This Act applies to periods beginning on or after July 1, 2020.